IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 250

CORNELIUS J. COLLINS, ET AL.,
Petitioners,

VS.

LESTER L. SEIFRIED,
Respondent.

SHERIDAN VIEW BUILDING CORPORATION,
Debtor.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONERS' REPLY BRIEF.

We will not burden the Court with an extended reply to Respondent's brief in opposition to Petitioners' application for a Writ of Certiorari. We have confined our reply to the following matters:

I.

Respondent in his brief in opposition to the Petition for a Writ of Certiorari states that no ground for certiorari exists under Rule 38 of this Court, and that, therefore, certiorari should be denied.

It is the contention of the petitioners that the decision of the Circuit Court of Appeals in the instant appeal improperly extended and misapplied the authority of the decision of this Court in the case of *Marine Harbor Properties, Inc.*, 317 U.S. 78. If this be true the decision of the Circuit Court of Appeals is probably in conflict with the decision of this Court within the meaning of Rule 38 (5) (B) of this Court.

The opinion of the Circuit Court of Appeals in the instant appeal quotes as the basis of its decision some of the language set out in the opinion of the *Marine Harbor* case. The facts, however, in the *Marine Harbor* case were entirely different from the facts in the instant appeal in that (1) the debtor was insolvent and therefore could not participate in the Federal Court or any Court; (2) there was no conflict between creditors; (3) the one class of creditors entitled to participate could obtain in the State Court foreclosure and liquidation of the debtor's estate and the application of the proceeds thereof to their debt. Thus it can be said that the interest of creditors would be best subserved in the prior foreclosure proceeding and there was no need for a proceeding in the Federal Court. With this in mind this Court said in its opinion in the *Marine Harbor* case that when a prior proceeding is pending the Petitioner's showing of "need for relief" must demonstrate that in some substantial particular the prior proceedings withhold or deny creditors or stockholders benefits, advantages or protection which Chapter X affords.

In the *Marine Harbor* case the debtor could not participate in either Court and therefore was not denied in the State Court any advantage or protection which Chapter X affords. The Circuit Court of Appeals in the instant appeal has interpreted said decision to mean that where there is a State Court foreclosure pending the equity jurisdiction of the foreclosure Court is general and the Court has ample power to protect one creditor against the undue advantage of another; that said Court has power to supervise a sale and to approve or reject the report of sale which operates to the prejudice of an interested party. The foreclosure Courts of Illinois with their general equity jurisdiction had this power before the passage of Chapter X by Congress. The effect of the decision of the Circuit Court of Appeals in the instant case where there is a foreclosure pending in the State Court is to hold meaningless Section 256 of Chapter X which provides that a petition may be filed in the Federal Court not withstanding the pendency of a prior mortgage foreclosure or other proceeding in another Court. Obviously this was not the intention of Congress as the very pendency of a proceeding to foreclose a mortgage is one of the essential allegations of a creditor's petition under Section 131 (4) of Chapter X. The practical effect of this decision would result in a race between creditors as to which forum best suited these particular needs, and would bar a Chapter X proceeding when a foreclosure proceeding is pending in the State Court.

We do not think this Court meant by its language in the *Marine Habor* case quoted by the Circuit Court of Appeals in the instant case to hold that in all cases where there was a pending State Court foreclosure that a Chapter X petition should be dismissed but that under the facts as they existed in said case the interest of the only class of creditors would be best subserved in the State Court.

II.

Respondent on pages 10 and 11 of his brief is in the opinion of petitioners shadow boxing with a proceeding which exists only in his imagination. In speaking of the adequacy of the State Court proceeding respondent leans heavily on Section 90 of the Illinois Business Corporation Act as though this section were before the State Court in the pending foreclosure proceeding. The only prior proceeding pending is a simple foreclosure which seeks a sale of the debtor's property. There is no action pending for a reorganization of the debtor corporation under the Illinois Business Corporation Act. Section 146 (4) of Chapter X speaks of a prior proceeding *pending* in any Court. The answer of respondent states said proceedings are now ready for decree (Rec. 11). Obviously if there were no foreclosure pending in the State Court it would be impossible for respondent to object to the jurisdiction of the Federal Court by asserting that there was a State reorganization statute providing for the reorganization of a corporation. Does respondent expect petitioners at this time to commence an original action for reorganization of the debtor in the State Court. It is conceded that the foreclosure courts have equity powers, but even these powers do not authorize an equity court to reorganize a corporation in the pending prior proceeding which is a foreclosure proceeding.

III.

It is admitted that Bishop owns 66% of the indebtedness of the Debtor, but respondent on pages 10 and 18 of his brief has adopted the balance of the bondholders so that he now assertedly speaks for 98% of said bondholders. This adoption on his part is not supported by the record.

Bishop, as attorney for the indenture trustee when he prepared and filed the foreclosure in the State Court did not make the bondholders who he has now adopted parties to said foreclosure suit, and did not cause any notice thereof to be sent to them. The very effect of the retention of jurisdiction by the Federal Court will be to give that unrepresented substantial group of bondholders an opportunity to speak for themselves and not be compelled, as they now are, to be represented in said State Court by respondent who is in charge of said proceeding, and with selfish motives could be guilty of abuse.

The instant case warrants the full consideration of this Court to the end that uncertainty and confusion in the jurisdiction of the Federal Court in a Chapter X proceeding be eliminated.

Respectfully submitted,

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